

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 98-0340 ST  
Sales Tax  
For The Tax Periods: 1994 through 1996**

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**ISSUE**

**Sales and Use Tax** : Floorcovering Sales and Installation

**Authority**: IC 6-2.5-1-1, IC 6-2.5-1-2, IC 6-2.5-2-1, IC 6-2.5-4-1, IC 6-2.5-9-4, IC 26-1-2-401(2), 45 IAC 2.2-3-7, *Cowden & Sons Trucking, Inc. v. Indiana Department of State Revenue*, 575 N.E.2d 718 at 722 (Ind. Tax 1991)

Taxpayer protests the assessment of tax on its sales and installation of floor covering.

**STATEMENT OF FACTS**

Taxpayer is a flooring retail store. Taxpayer sells carpet, tile, and other floor materials at retail. Taxpayer sells floor materials to customers who make arrangements to install the materials themselves. Taxpayer also sells floor materials to customers who wish to have taxpayer make arrangements for the flooring to be installed by his outside contractors. In these sales, the taxpayer bills the customer for the flooring and installation labor. When the taxpayer's invoice to its customer listed carpet, pad and labor charges per yard as separate line items, the labor charges were not subject to tax. However, unpaid sales and use tax was assessed on invoices where carpet, pad and labor were included in one price per yard. In the transactions where the price was calculated at one price per yard, tax was consistently collected on the cost of materials transferred to the customer; tax was not collected for the labor charges.

**DISCUSSION**

Retail transactions made in Indiana are subject to sales tax. IC 6-2.5-2-1. A retail transaction is defined generally as the acquiring and subsequently selling tangible personal property. IC 6-2.5-4-1. Except for certain enumerated services, sales of services are generally not retail transactions

and are not subject to sales tax. There are two instances when an otherwise nontaxable sale of a service is subject to sales tax. The first is when the services are performed with respect to tangible personal property being transferred in a retail transaction and the services take place prior to the transfer of the tangible personal property. IC 6-2.5-4-1(e). The second is when the services are part of a retail unitary transaction. IC 6-2.5-1-2. A unitary transaction is defined as a transaction which includes the transfer of tangible personal property and the provision of services for a single charge pursuant to a single agreement or order. IC 6-2.5-1-1.

The taxpayer in this case sold and installed floorcoverings. The taxpayer installed the floorcoverings in a residence or other structure designated by the purchaser. As explained above, charges for services performed with respect to tangible personal property are subject to sales tax if the services are performed prior to transfer of the property. Pursuant to the commercial law of Indiana, absent an explicit agreement to the contrary, transfer is presumed to take place upon physical delivery of the property. IC 26-1-2-401(2). The installation in this case takes place after the floorcovering has been delivered to the location designated by the purchaser. And in the absence of an explicit agreement between the taxpayer and its customers to the contrary, the transfer takes place prior to installation.

The taxpayer sometimes invoiced his customer using a single charge per square yard for the floorcovering and the installation service. These transactions are by definition unitary transactions pursuant to IC 6-2.5-1-1. As such, it would seem that the entire charge would be subject to tax. However, in *Cowden & Sons Trucking, Inc. v. Indiana Department of State Revenue*, 575 N.E.2d 718 at 722 (Ind. Tax 1991), the court stated that “the legislature intends to tax services rendered in retail unitary transactions only if the transfer of property and the rendition of services is inextricable and indivisible.” In *Cowden*, the court looked at the taxpayer’s records, the overall nature of the taxpayer’s business, and the nature of the unitary transactions themselves to determine whether the unitary transactions were inextricable and indivisible. *Id* at 723.

In this case, the taxpayer’s records indicate that he did not always combine the charges for the floorcovering and installation. The taxpayer did consistently itemize the tax as required by IC 6-2.5-9-4. In those instances when he did combine the charges, the taxable vs. nontaxable amounts were consistent with the amount on invoices where the charges were not combined.

The taxpayer is in the retail business of selling floorcovering. As is the custom in that business, he also offers installation services. However, it is not required physically or by business practice that customers purchase the floorcovering with installation.

The nature of transactions at issue indicate that customers could negotiate a price for taxpayer’s wares with or without installation. When a customer purchased floorcovering and installation, the taxpayer sometimes separated the charges and sometimes not. There is no evidence that the parties intended to enter into or memorialize an inextricable and indivisible contract for goods and services.

**FINDING**

Taxpayer's protest is sustained.